

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ROBERT EMMA, Custodian, IRA, DTD  
7/10/97,

Plaintiff,

VS.

RS INVESTMENT MANAGEMENT, L.P.,  
PFPC DISTRIBUTORS, INC., G.  
RANDALL HECHT, LEONARD B.  
AUERBACH, JEROME S. CONTRO,  
JOHN W. GLYNN JR. and MICHAEL  
MCCAFFERY,

Defendants, and

RS EMERGING GROWTH FUND,

Nominal Defendant.

Civil Action No. 04-CV-12106 NMG

**ASSENTED TO MOTION FOR DISMISSAL WITHOUT PREJUDICE**

Plaintiff Robert Emma, with the assent of Defendants RS Investment Management, L.P., PFPC Distributors, Inc., G. Randall Hecht, Leonard B. Auerbach, Jerome S. Contro, John W. Glynn Jr. and Michael Mccaffery and Nominal Defendant RS Emerging Growth Fund, hereby moves pursuant to Fed. R. Civ. P. 41(a) and Fed. R. Civ. P. 23.1, to dismiss this Action without prejudice and without costs, all rights of appeal being waived.

Pursuant to Fed. R. Civ. P. 23.1, this Court should approve the dismissal of this Action, without notice, because there is no prospect of any prejudice to the shareholders of RS Emerging Growth Fund. The dismissal is without prejudice and no

consideration is being paid to Plaintiff or his counsel.

Dated: May 31, 2005

/s/ Michelle H. Blauner

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Counsel for Defendants RS Investment  
Management, L.P., G. Randall Hecht,  
Leonard B. Auerbach, Jerome S. Contro,  
John W. Glynn Jr. and Michael McCaffery  
and Nominal Defendant RS Emerging  
Growth Fund

/s/ Robert G. Jones

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Counsel for Defendant PFPC  
Distributors, Inc. and Local Counsel for  
All Defendants